IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2225 of 2002
with
CIVIL APPLICATION No 741 of 2003
with
CIVIL APPLICATION No 8368 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FASCEL LTD. THROUGH COMPANY SECRETARY AND VICE PRESIDENT

Versus

STATE OF GUJARAT

Appearance:
MR MIHIR THAKOR, Sr.Advocate with
MR AMIT M PANCHAL for Petitioner No. 1-2
MR SN SHELAT, AG with MR UDAY BHATT,
AGP for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2
MR ASIM J PANDYA for Respondent No. 3-4

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE A.L.DAVE

Date of decision: 18/02/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. When this petition is called out, after some discussion, it appeared that the real dispute was whether Sales Tax could be charged by the State Government in respect of services which are provided while supplying sim cards to the customers by these petitioners. There is no dispute about the fact that sim cards as such have their own value, but they will not have utility without the service being provided along with such cards. The moot question is whether the Sales Tax Department can charge Sales Tax in respect of sim cards as well as the services provided along with it. It appears that the department had, under Section 41 of the Gujarat Sales Tax Act, issued notices in Form 36 and subsequent show cause notice dated 20th November, 2002 for assessing the petitioners in respect of the goods supplied for the Assessment Year 1996-97 onwards.

#. Having regard to the nature of controversy involved, it is agreed between the petitioners through their learned counsel and the department through the learned Advocate General that the Sales Tax Department will determine as to what is the price at which the sim cards were sold by the petitioners to their customers after hearing the petitioners; and, excluding the component of service in the price charged while issuing the sim cards, the department will assess sales tax payable on the goods i.e. sim cards as such without inclusion of service element that went with them. This decision will be taken afresh after hearing the petitioners and without being prejudiced by any earlier decision that the department may have taken in the matter. The petitioners will produce relevant material during the hearing as may be required for the purpose of adjudication. This arrangement is without prejudice to the rights and contentions of the concerned parties including the Central Government.

#. In view of the above arrangement, the learned counsel for the petitioners states that the petitioners do not press for this petition at this stage. We make it clear that we do not express any opinion on the merits of the disputes involved in this petition. Rule is, therefore, discharged with no order as to costs.

No orders on the Civil Applications in view of the order made in the petition. Ad-interim relief stands vacated.

[R.K. ABICHANDANI, J.]

[A.L. DAVE, J.]

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